Whether approved for reporting ?

For the appellant: **Mr.J.S.Guleria, Law Officer.**

For respondents: **Mr.M.L. Sharma, counsel for respondent No.1.**
Mr.Sunil Chauhan, counsel for respondent No.2.

Deepak Gupta, J.

This appeal by the State under Section 378 of the Code of Criminal Procedure has been filed against the judgment dated 31.3.1998 passed by learned Addl.Chief Judicial Magistrate, Sirmaur District at Nahan, H.P. in Criminal Case No.35/2 of 1996/95 whereby the accused have been acquitted of having committed offences under Sections 41 & 42 of the Indian Forest Act and Section 379 IPC.

The prosecution case, in brief, is that on the night intervening 2nd/3rd June, 1995 Head Constable Parkash Chand alongwith Constable Meen Singh, Constable Nausad Akhtar and Constable Sumer Chand was on patrolling duty near Mayur. All the vehicles were being checked. Around 3 a.m. one truck No.HPA-6647 was coming

Section 379 IPC. Accused Sanjay Kumar absconded and did not appear despite service. He was declared a proclaimed offender and the trial proceeded against other three accused.

The prosecution examined a number of witnesses. PW-1 Guman Singh has proved the measurement of the recovered timber. He also applied the hammer marks to the timber. He has proved the memo Ext.PW-1/B regarding the measurement of the seized timber. According to him the value of the timber was about Rs.80,000/-. To the similar effect is the statement of PW-4 S.R. Rana, Range Officer, Nahan.

PW-5 Meen Singh has stated that the truck was stopped during nakabandi at around 3 a.m. on the night intervening 2nd/3rd June, 1995. 60 sleepers of devdar wood were recovered. Four persons were travelling in the truck i.e. the three accused and the absconder Sanjay Kumar. The accused were requested to produce the requisite papers regarding transportation of the timber

PW-6 Nausad Akhtar has also supported the prosecution version and therefore one need not deal with his evidence in detail. Similar suggestions have been put to him in cross examination by the counsel for the accused.

PW-7 Nem Chand is an independent witness. He supports the prosecution version and states that on 3.6.1995, 60 slippers of Devdar lying in truck No.HPA-6647 were measured by him.

Statements of the accused persons were recorded under Section 313 Cr.P.C. In the statement of Ganga Sagar it is stated that the timber was being transported against valid permit. Mohan Lal states that he was simply sitting in the truck as a passenger. To the similar effect is the statement of Jeevan Singh. Respondents examined one witness DW-1 Ram Krishan. According to him he and Ganga Sagar were having tea in the hotel of one Mohan Singh. There they met Sanjay Kumar and the truck was engaged to transport timber.

investigation has been conducted by the same police official in whose presence the search and seizure had taken place. The learned trial Court relied upon the judgments of the Apex Court in **Megha Singh vs. State of Haryana**, AIR 1995 SC 2339, and **Gyan Chand vs. The State of Rajasthan**, 1993 Cri.L.J. 3716. According to the trial Court this is a major flaw in the prosecution case and that the same person who had stopped the truck, seized the timber and filed the complaint should not have continued with the investigation so that the investigation can be fair and impartial.

True it may be, that normally it is not expected that the police official who is the complainant should also conduct the investigation. This can lead to unfair investigation since the complainant would obviously try to prove his case by fair means or foul. However, each case has to be decided on its own peculiar facts. It must also be shown that the investigation being conducted by the same official who has filed the

According to Ganga Sagar, the driver, the timber belongs to Sanjay Kumar who had shown him the valid documents and on the basis of these documents he had loaded the timber in the truck. This is the case as set-out by DW-1 also. As far as Mohan Lal and Jeevan Singh are concerned their case is simply that they had only taken a lift in the truck and have nothing whatsoever to do with the timber being carried in the truck. The explanation of the accused cannot be accepted. In case Sanjay Kumar had shown any permit or other documents permitting him to transport the timber then why should he has not shown that permit to the police officials when the truck was intercepted by the police. The story of Mohan Lal and Jeevan Singh cannot also be accepted. The version of Jeevan Singh that he had taken lift at Sangrah as he had to go to Dadahau. PW-5 has specifically denied the suggestion that Jeevan Singh had told him about this fact. According to Jeevan Singh the timber was handed over to Ganga Sagar by

truck at such odd hour. The accused have not produced any documents to show from where the timber was cut or that there was any permission to transport the timber.

The State of Himachal Pradesh has framed the H.P. Forest Transit Land Rules, 1978 under Sections 41 and 42 of the Indian Forest Act. Rule 10 provides for issuance of a pass for export or transport of forest produce. Rule 11 prohibits the transport of any forest produce without pass. This pass has to be carried by the owner of the timber at all times. Rule 20 provides that any person who disobeys the aforesaid Rules shall be liable for imprisonment which may extent to 2 years or with fine which may extend to Rs.5,000/- or with both and the forest produce being transported may be seized and dealt with under the provisions of the Indian Forest Act. It is further provided that the penalty shall be double in case the offence is committed after sun-set and before sun-rise.

In view of the above discussion, the appeal filed by the State is allowed and all the accused are convicted for having committed offence under Sections 41 and 42 of the Indian Forest Act. Each of the respondents-accused is sentenced to undergo one year's rigorous imprisonment and to pay fine of Rs.10,000/-. In default of payment of fine they shall be liable to undergo further rigorous imprisonment for a period of 3 months. All the accused-respondents are directed to surrender before the trial Court on or before 15th February, 2006 to undergo and receive the sentence imposed upon them. The case property be dealt with as directed by the trial Court.

January 11, 2006. **(Deepak Gupta),**
PV **Judge**